

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ABIMAE L MANSO-DIAZ,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 05-192E
v.	:	
	:	JUDGE McLAUGHLIN
	:	
WARDEN JAMES SHERMAN,	:	(<i>Electronic Filing</i>)
	:	
Defendant.	:	

**DEFENDANT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT**

AND NOW, come Defendant, by and through his attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Michael C. Colville, Assistant United States Attorney for said district, and, pursuant to Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure, respectfully move this Court to issue an Order dismissing the Complaint of Plaintiff, Abimael Manso-Diaz, or, in the alternative, for summary judgment in favor of Defendant, upon the grounds that the pleadings on file, together with the attached declarations and exhibits show that there is no genuine issue as to any material fact and that the Defendant is entitled to judgment as a matter of law.

A Memorandum of Law in support of this Motion, together with declarations with exhibits, is being filed simultaneously herewith and the contents therein incorporated by reference.

WHEREFORE, Defendant respectfully requests that this Court issue an Order dismissing the Complaint of Plaintiff, Abimael Manso-Diaz, or in the alternative, for summary judgment in favor of the Defendant.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

s/ Michael C. Colville
MICHAEL C. COLVILLE
Assistant U.S. Attorney
Western District of PA
U. S. Post Office & Courthouse
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within DEFENDANT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT was served by mail upon the following:

Marc Shatkin, Esquire
SHATKIN & SHATKIN
434 Delaware Avenue
Buffalo, NY 14202

s/ Michael C. Colville
MICHAEL C. COLVILLE
Assistant U.S. Attorney

Date: August 1, 2005